

REMARKS

Claims 1-18 and 29-31 have previously been withdrawn. Claims 19-28 have been rejected. By this Amendment, claims 19, 20 and 28 have been amended. In addition, two paragraphs of the Specification have been amended for clarity. Claims 19-28 remain in the application.

Drawings

The objection to the drawings is respectfully traversed. It should be noted that the Office Action refers to the drawings originally submitted on 30 September 2003. Formal drawings were filed in this case on April 5, 2004; these formal drawings include clear reference numerals. In addition, the first 31 pages of drawings correspond with those in United States Patent Application Ser. No. 10/633,469, which were accepted by the Examiner in that application.

With respect to reference numeral 1438 in FIG. 32, the lead line for this reference numeral has an arrow at its end. Under 37 CFR 1.84(r)(1), a freestanding arrow may be used on a lead line "to indicate the entire section towards which it points...." Here, reference numeral 1438 points generally toward reference numeral 1458, and the description indicates that "the tube 1438 may further include a drill bushing 1458 which slidably fits within the round sheath 1456." (specification page 47, lines 1-3). In light of the above, it is believed that the lead lines for the reference numerals are clear.

Claim Objections

Claim 28 has been amended to clarify that the claim refers to a kit.

Claim Rejections – 35 USC §112

The rejection of claim 28 under 35 USC 112 is respectfully traversed. Nonetheless, claim 28 has been amended to recite that the first and second targeting guides cooperate selectively and separately with the riser. FIG. 63 of this application illustrates the first

targeting guide 1448 attached to the riser or handle 1446 and the second targeting guide 1910 separate from the riser or handle 1446.

In view of the above, claim 28 is patentable.

Claim Rejections – Double Patenting

The provisional rejection of claim 19 on the ground of nonstatutory obviousness-type double patenting is respectfully traversed. According to MPEP §804:

“even if the application at issue is the earlier filed application, only a one-way determination of obviousness is needed to support a double patenting rejection in the absence of a finding ... (B) that applicant could not have filed the conflicting claim in a single (i.e., the earlier filed) application.”

In this case, claim 1 of United States Patent Application Ser. No. 11/457,305 requires that the removable guide have “a length of not more than one inch.” This length limitation is not found in the present application. Accordingly, claim 1 of Ser. No. 11/457,305 could not have been made in the present application. Moreover, the two-way obviousness test “is to be applied only when the applicant could not have filed the claims in a single application *and* there is administrative delay.” (MPEP §804). Finally, claim 1 of Ser. No. 11/457,305 is not obvious over claim 19 of the present case; claim 19 of the present case does not disclose or suggest the length limitation of claim 1 of 11/457,305. Accordingly, the double patenting rejection is not appropriate in this case.

Claim Rejections – 35 USC §102

Applicants respectfully traverse the rejection of claims 19-20, 22 and 24-28 under 35 USC 102 as being anticipated by Aikins et al. Claim 19 requires that the tube be sized and shaped to extend between the targeting guide and the bone plate when the riser is attached to the bone plate. Aikins et al. does not disclose such a structure. As illustrated in FIG. 29 of Aikins et al., the tube element extends upward from the body, away from the plate; the body portion lies between the plate and the tube element. Accordingly, claim 19 and its dependent claims 20, 22 and 24-28 are patentable over Aikins et al.

In addition, Aikins et al. is not seen to disclose or suggest providing a bushing with an offset bore as in claim 20 of the present application. Accordingly, claim 20 is patentable over Aikins et al.

Claim Rejections – 35 USC §103

Applicants respectfully traverse the rejection of claims 21 and 23 under 35 U.S.C. §103 as being unpatentable over Aikins et al. in view of Levy (U.S. Patent No. 5,540,695). As indicated above with respect to claim 19, Aikins et al. is not seen to disclose or suggest providing a guide wherein a tube is sized and shaped to extend between a targeting guide and a bone plate when a riser is attached to the bone plate. Levy is not seen to disclose such a structure. Accordingly, even if one were motivated to combine Aikins et al. and Levy, the combinations claimed in claims 21 and 23 would not have resulted. Claims 21 and 23 are therefore patentable over Aikins et al. and Levy.

Conclusion

It is believed that the claims 19-28 are in condition for allowance. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

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